

KANAWHA & HOCKING COAL & COKE CO.

IBLA 85-450

Decided August 15, 1986

Appeal from a decision of the Utah State Office, Bureau of Land Management, readjusting coal lease U-067498.

Affirmed as modified.

1. Coal Leases and Permits: Leases -- Coal Leases and Permits:
Readjustment -- Words and Phrases

"Transmit." Regulation 43 CFR 3451.1(c)(2) provides that BLM waives its right to readjust a coal lease if it fails to "transmit" the lease terms within 2 years of the notice of intent to readjust the lease. "Transmit," as used in this regulation, means "to send." Therefore, where BLM deposits the proposed readjusted lease terms in the mail within 2 years of the notice, BLM may readjust the lease, even when the proposed lease terms are received by the lessee more than 2 years after the notice.

2. Coal Leases and Permits: Leases -- Coal Leases and Permits:
Readjustment

BLM is not barred from readjusting all the terms and conditions of a coal lease issued prior to enactment of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 201-209 (1982), in accordance with the requirements of the statute and its implementing regulations, where a notice of intent to readjust is given prior to the end of the 20-year primary term of the lease.

3. Coal Leases and Permits: Leases -- Coal Leases and Permits:
Readjustment

In accordance with 30 U.S.C. § 207(a) (1982), the Secretary has determined by regulation that royalty for coal mined will be not less than 12-1/2 percent of the value of coal removed from a surface mine and not less than 8 percent of the value of coal removed from an underground mine. However, the authorized officer may

determine a lesser amount is appropriate for an underground mine, but in no case less than 5 percent. In addition, the Secretary may, in accordance with 43 CFR 3473.3-2(d), reduce the royalty obligation for any mine.

APPEARANCES: John S. Kirkham, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Kanawha & Hocking Coal & Coke Company (K&H), appeals the February 12, 1985, decision of the Utah State Office, Bureau of Land Management (BLM), overruling in part and sustaining in part K&H's objections to the readjustment of coal lease U-067498.

The coal lease was issued effective January 1, 1962. By its own terms and pursuant to section 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1958), it was subject to readjustment of rentals, royalties, terms and conditions at the end of its 20-year primary term. By notice dated October 27, 1981, BLM informed K&H that the lease terms were to be readjusted in accordance with section 6 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. § 207(a) (1982). K&H received this notice on November 2, 1981. BLM sent the proposed readjusted lease to K&H by certified mail on October 25, 1983. It was received by K&H on November 1, 1983. K&H filed written objections to the proposed readjusted lease on December 8, 1983. BLM's decision of February 12, 1985, overruled in part and sustained in part the objections. K&H timely filed a notice of appeal and statement of reasons to the Board.

The first issue for consideration is a question raised by K&H over the meaning of the word "transmit" in 43 CFR 3451.1(d)(2) (1981). That regulation provides:

In any notification that a lease will be readjusted under this subsection, the authorized officer shall prescribe when the notice of readjusted lease terms shall be transmitted to the lessee. This time shall be as soon as possible after notice that the lease shall be readjusted, but shall not be longer than 2 years after such notice. Failure to transmit the notice of readjusted lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department. [Emphasis added.]

43 CFR 3451.1(d)(2) (1981); currently codified at 43 CFR 3451.1(c)(2).

K&H asserts BLM waived its right to readjust the lease because 43 CFR 3451.1(d)(2) (1981) required BLM to send the readjusted lease terms so that they would be received by K&H within 2 years after the date of the notice of proposed readjustment, and the record shows they were not received by K&H until November 1, 1983, 2 years and 5 days after the notice date. As authority that timeliness of documents is based upon receipt, K&H cites 43 CFR 1821.2-2(f), which provides: "[F]iling is accomplished when a document is

delivered to and received by the proper office. Depositing a document in the mails does not constitute filing."

K&H also argues BLM waived its right to readjust the lease because BLM failed to meet the deadline set out in the notice. BLM's notice stated in part:

As required by the regulations in 43 CFR 3451.1(d)(2), a notice containing the readjusted terms and conditions will be forwarded to you no later than two years from the date of this notice. The readjustment will become effective 60 days after your receipt of that notice. [Emphasis added.]

BLM stated in its decision that it complied with the time requirements of the regulation and notice by sending the lease terms within 2 years of the notice date, and that 43 CFR 1821.2-2(f) applies only to documents filed with it. BLM argued the "mailbox rule," wherein a document is deemed timely received when it is timely deposited into the mail, is applicable and thereunder the lease terms were transmitted on time.

[1] BLM must "transmit" readjusted lease terms within the time specified in the readjustment notice, but in no case longer than 2 years after such notice. 43 CFR 3451.1(c)(2). Failure to meet the regulatory deadline or a shorter self-imposed deadline results in a waiver of BLM's right to readjust the lease terms. *Kaiser Steel Corp.*, 76 IBLA 387, 393 (1983).

"Transmit" is not defined in the regulations. Nevertheless, we conclude "transmit," as used in 43 CFR 3451.1(c)(2) (1981) means "to send," whereas "to file" means "to send and receive." This interpretation is consistent with the use of these terms in other Department regulations. For instance, 43 CFR 4.401(a) provides:

Whenever a document is required under this subpart to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. [Emphasis added.]

The distinction between "filing" and "transmitting" in 43 CFR 4.401(a) is clear; "transmitting" contemplates sending a document, whereas, "filing" contemplates receipt, as well. Since 43 CFR 3451.1(d)(2) (1981) only required BLM to "transmit" the lease terms within 2 years of the notice, we find BLM timely fulfilled its regulatory obligation.

Moreover, BLM satisfied its self-imposed obligation to "forward" the lease terms within 2 years. "Forward" is defined as "1: to help onward: ADVANCE 2a: to send forward: TRANSMIT b: to send or ship onward from an intermediate post or station in transit." Webster's Seventh New Collegiate Dictionary 330 (7th ed. 1971). "Forward" is synonymous with "transmit."

Thus, our rationale concerning the transmittal of the proposed readjusted lease is equally applicable when considering whether BLM timely "forwarded" the lease. Accordingly, BLM did not waive its right to readjust coal lease U-067498. ^{1/}

[2] Under section 3(d) of the original lease the United States reserved the right "reasonably to readjust and fix royalties payable hereunder and other terms and conditions." Citing the rule of construction, ejusdem generis, K&H argues section 3(d) permits BLM to readjust royalties and only such terms and conditions as are necessary to implement the reasonable readjustment of royalties.

In Coastal States Energy Co., 81 IBLA 171, 174 (1984), we rejected this argument. At the time lease U-067498 was issued, the regulation in effect, 43 CFR 193.16 (1954), provided that all terms and conditions of coal leases were subject to readjustment. Thus, the United States reserved the right to adjust every term of the lease. Kaiser Steel Corp., 87 IBLA 228, 233 (1985); Consolidation Coal Co., 86 IBLA 60, 64 (1985). See also Rosebud Coal Sales Co. v. Andrus (Rosebud), 667 F.2d 949, 951 (10th Cir. 1982).

Appellant argues it has a contractual right under the lease to be subject only to the reasonable regulations in force at the beginning of the primary term. K&H objects to the provision in section 1 of the proposed lease which subjects the lessee to all regulations which are "now or hereinafter in force." As just stated, under the original lease the United States has the right to readjust the terms and conditions of the lease. Moreover, the original lease was executed "subject to the terms and provisions of the act of February 25, 1920 (41 Stat. 437), as amended." (Emphasis added.) Section 7 of that Act provided for periodic coal lease readjustment. 30 U.S.C. § 207 (1958). Consistent with the statutory right to readjust the lease terms and conditions, the Department may promulgate regulations prescribing new terms and conditions for the readjusted lease. Therefore, both FCLAA and regulations implementing that Act apply to leases issued prior to FCLAA and readjusted after that Act. Gulf Oil Corp., 91 IBLA 93, 100 (1986); Consolidation Coal Co., 87 IBLA 296, 298 (1985); Sunoco Energy Development Co., 84 IBLA 131, 133 (1984); Coastal States Energy Co., 81 IBLA at 173; Coastal States Energy Co., 70 IBLA 386, 390 (1983), *aff'd*, Coastal States Energy Co. v. Watt, 629 F. Supp. 9 (D. Utah 1985), appeal filed Coastal States Energy Co. v. Hodel, No. 86-1031 (10th Cir. Feb. 24, 1986).

Moreover, in Lone Star Steel Co., 77 IBLA 96 (1983), the Board stated that an objection to the "now or hereafter in force" language was conjectural, since harm would depend upon a change in the regulations adversely affecting the lessee. In addition, we explained the basis for this provision:

[T]here are many forms of new, revised or amended regulations which might legitimately be applied to appellant's lease during

^{1/} BLM sustained some of the Dec. 8, 1983, objections K&H made to the specific terms of proposed readjusted coal lease U-067498. Because K&H has not received readjusted lease terms reflecting the sustained objections, K&H reasserts its original objections. Nevertheless, we shall not readdress the sustained objections, because no further relief is warranted.

the future, some which conceivably could work to the lessee's advantage, or at least not adversely affect it. Regulations can define terms, designate forms, or establish procedures. Other regulations may be necessary to implement new legislation concerning environmental protection, national emergency measures, or matters of health or safety, which could be made obligatory on the lessee in any event. Thus, the language of section 1 is not per se unlawful. Further, when new or revised regulations are promulgated, the Department must adhere to administrative procedures found in 5 U.S.C. § 553 (1976), which afford interested parties the opportunity to become involved in the rulemaking process. If such regulations are applied to the lease and appellant feels that its rights have been adversely affected, it may then have a right to appeal to this Board for relief.

Lone Star Steel Co., 77 IBLA at 97-98; see also Kaiser Steel Corp., 87 IBLA at 231 (1985); Consolidation Coal Co., 86 IBLA at 67.

K&H objects to sections 1 and 6 of the proposed lease on the ground that under these sections the value of coal calculation affecting royalty payments may be unilaterally changed by BLM during the readjustment term. Section 6 of the readjusted lease provides the value of coal shall be determined as set forth in the regulations. Section 1 provides in part,

This lease is also subject to all regulations of the Secretary of the Interior * * * which are now or hereafter in force and which are made a part hereof. No amendment to the regulations made subsequent to the effective date hereof shall alter the rental and production royalty requirements in sections 5 and 6 of this lease until the next readjustment of this lease. [Emphasis added.]

In response to this objection BLM stated in its decision: "The wording in these sections will not be changed. However, they will be read so as to assume no conflict will occur. Therefore, the determination of the value of the coal shall be determined as set forth in the regulations" (Decision at 5).

Thus, BLM interprets sections 1 and 6 of the proposed readjusted lease to mean that during the readjusted term of the lease, the method of calculating the value of coal for royalty purposes shall be that method set forth in the regulation on the effective date of readjustment, and any subsequent regulatory change will not alter that method. This interpretation addresses K&H's concern and obviates the objection.

K&H argues "diligent development and continued operation," should be defined in the lease or in a regulation, which should be effective for the term of the lease because the lessee is entitled to reasonable contract certainty as to the meaning of these terms. BLM sustained this objection below, but K&H argues BLM's revised language contains a similar infirmity in that it allows BLM to "unilaterally change, by regulation, the meaning of the terms 'diligent development and continued operation'" (Statement of Reasons at 11). We reject this objection for the reasons set forth in Lone Star Steel Co., 77 IBLA at 97-98.

K&H complains that under the lease the United States may unilaterally change the amount of the bond at any time, with no reference to the guidelines used in determining the bond amount nor to any time interval for doing so. K&H argues the readjustment should be limited to specified intervals and the amount based on certain guidelines.

BLM, in response to K&H's objection below stated, "[l]ease bonding stipulations must be flexible enough to protect the Government's interest throughout the term of the lease" (Decision at 6). In addition, BLM stated "The basis for determining bonding recommendations is a memorandum from Division Chief, Onshore Minerals Regulation, which was issued on April 23, 1980. No changes have occurred since then." This memorandum requires a bond sufficient to cover 3 months of estimated production and a 1-year rental. See Coastal States Energy Co., 81 IBLA at 175.

Although the statute and regulations do not outline a specific formula for calculating the bond amount, the regulation defining "lease bond," 43 CFR 3400.0-5(s), contains criteria for measuring the sufficiency of a bond. That regulation provides:

(s) "Lease bond" means the bond or equivalent security given the Department to assure payment of all obligations under a lease, exploration license, or license to mine, and to assure that all aspects of the mining operation other than reclamation operations under a permit on a lease are conducted in conformity with the approved mining or exploration plan. [Emphasis added.]

See Ark Land Co., 90 IBLA 43, 50 (1985); Coastal States Energy Co., 81 IBLA at 175. Furthermore, the bond amount required by 43 CFR 3474.2(a) must be adequate to assure "compliance with all terms and conditions of the lease," except reclamation. Sunoco Energy Development Co., 84 IBLA at 135. Although, as appellant asserts, the better Department policy may be to provide detailed regulatory criteria for bond calculation, the regulation presently contains standards. Accordingly, the bond requirement set out in the lease is proper.

K&H objects to the increased rental from \$ 1 per acre to \$ 3 per acre. K&H also opposes the elimination of a credit for rentals against production royalties. These objections are dismissed on the grounds stated in Gulf Oil Corp., 91 IBLA at 100-101; Ark Land Co., 90 IBLA at 50; Ark Land Co., 86 IBLA 153, 157 (1985); Consolidation Coal Co., 86 IBLA at 68; and Mid-Continent Coal & Coke Co., 76 IBLA 312, 316 (1983).

The production royalty rate of 12-1/2 percent of coal produced by strip or auger mining methods and 8 percent of coal produced underground, as set forth in section 6 of the proposed readjusted lease, are opposed by K&H. The rate under the original lease was 15 cents a ton on 2,000 pounds of coal mined. K&H argues the increase is unreasonable and "shocks the conscience" (Statement of Reasons at 12).

[3] The 12-1/2 percent of the value of coal production royalty for coal mined by strip or auger methods is based on the minimum royalty prescribed by statute, 30 U.S.C. § 207(a) (1982), and regulation, 43 CFR 3473.3-2(a)(2), for coal removed from a surface mine. The 8 percent royalty

for the value of coal removed from an underground mine is also consistent with statutory and regulatory requirements. Section 6 of the FCLAA provides that the Secretary may set a royalty for coal mined underground at less than 12-1/2 percent of the value of coal. 30 U.S.C. § 207(a) (1982). The 8 percent royalty rate is set out in 43 CFR 3473.3-2(a)(3) which provides: "A lease shall require payment of a royalty of not less than 8 percent of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant."

The validity of the regulation establishing the 8 percent production royalty on coal removed from an underground mine was upheld by the United States District Court of Utah in Coastal States Energy Co. v. Watt *supra*. After a thorough review of the Department's rulemaking record, the district court concluded the regulation was rationally based and not arbitrary and capricious. The court stated:

The affidavit reveals that the Secretary and others involved in promulgating the Regulation did indeed consider the relevant factors. In deciding to fix the royalty rate at 8 percent rather than 12 1/2 percent or 5 percent or lower, the Secretary considered existing Department policy; he sought comparative royalty rates; he published the proposed rate and invited comments thereon; he considered what comments he did receive on the proposed rate; and he noted the lack of objection to the proposed 8 percent rate. In deciding to fix a normal ceiling rate rather than undertake individual consideration in every case, he balanced the likely benefits of such a rule against the substantial costs of individual consideration. He determined that he could not as a practical matter undertake individual review of every lease, given limited manpower and the number of leases up for readjustment.

One fact, however, stands above the rest: The Secretary felt, based on the above considerations, that the 8 percent blanket rate was reasonable; but if in an individual case it was not, then there was a procedure for an individual lessee to seek review and relief. If a lessee could show that, given all the factors unique to his mining operation, an 8 percent royalty rate was economically unfeasible, then the Secretary was empowered to reduce the royalty. [Emphasis in original.]

629 F. Supp. at 30.

K&H argues Department regulations provide that the minimum royalty for underground mining should be 5 percent, not 8 percent of the value of coal removed. 2/ K&H's proposed interpretation of the regulations was specifically

2/ K&H's argument is based on 43 CFR 3451.1(a)(2) which provides: "Any lease subject to readjustment which contains a royalty rate less than the minimum royalty prescribed in § 3473-3-2 of this title shall be readjusted"

considered and rejected by the district court in Coastal States Energy Co. v. Watt, 629 F. Supp at 25. as being "without merit." Thus, the "minimum [royalty] prescribed," refers to the standard minimum royalty for coal removed from an underground mine 8 percent, not the 5 percent rate which may be established under certain circumstances at the time of lease issuance by the authorized officer.

K&H also argues the readjusted royalty rates must "reflect the specific factual situation with respect to the lands included within the lease." The district court also dealt with this argument in Coastal States Energy Co. v. Watt, 629 F. Supp at 32, when it stated at page 19:

Faced with the prospect of individually reviewing many leases up for readjustment, charged with a mandate to develop coal reserves while preserving the environment and burdened with increasing demands on decreasing resources (both fiscal and manpower), the Secretary exercised considerable skill and judgment in formulating a procedure to accommodate all of those competing concerns. The imposition of a blanket 8 percent rate upon lease readjustment, with the possibility of a lower rate on a showing of economic hardship, reflects a careful balancing of the relevant factors. * * * This court therefore finds that the challenged regulations are substantively valid.

The Board had previously reached a similar result in Blackhawk Coal Co., 68 IBLA 96 (1982). Therein, we stated:

Departmental regulation 43 CFR 3473.3-2 provides two ways of granting underground coal lessees relief from the statutory 12-1/2 percent royalty. Subsections (a)(1) and (a)(3) implement 30 U.S.C. § 207(a) (1976) and provide that a rate as low as 5 percent may be determined at lease issuance. Alternatively, the Department may establish a royalty rate in the lease and provide relief after lease issuance upon application of the lessee under subsection (d), which implements 30 U.S.C. § 209 (1976). Appellant has not persuaded us that it is unreasonable to establish an 8 percent royalty rate in the lease now, since the rate may temporarily be reduced later if conditions warrant. If a lower rate is put into the lease now and economic conditions change favorably during the term of the lease, there will be no opportunity for upward adjustment of the royalty figure until the lease is again ripe for readjustment. The method chosen by BLM thus assures the United States a fairer return over the life of lease, provides appellant some relief from the statutory 12-1/2 percent rate, yet affords appellant an opportunity for

fn. 2 (continued)

to conform to the minimum prescribed in that section" and on 43 CFR 3473.3-2(a)(3) which reads as follows: "A lease shall require payment of a royalty of not less than 8 percent of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant." (Emphasis supplied.)

further royalty relief when it is really needed. We previously have affirmed BLM decisions denying special royalty relief at lease readjustment, requiring lessees to seek such relief under 43 CFR 3473.3-2(d). Lone Star Steel Co., 65 IBLA 147 (1982); Garland Coal and Mining Co., 49 IBLA 400 (1980).

See also Gulf Oil Corp., 91 IBLA at 101-102; Ark Land Co., 90 IBLA at 51. K&H's arguments concerning production royalty rates were properly overruled by BLM. ^{3/}

The proposed readjusted lease provides royalty payments shall be made monthly, rather than quarterly as they were required during the primary term. K&H argues this change is improper. The scope and nature of the changes BLM may impose upon coal lease readjustment are not limited so long as the changes are in accordance with the proper administration of the land. Rosebud, 667 F.2d at 951. Readjustment of the timing of royalty payments is well within the scope of BLM's broad based authority to readjust the terms of the coal lease. Ark Land Co., 86 IBLA at 159.

K&H objects to the change in basis for royalty payments from cents per 2,000 pounds mined to percent of value of coal produced. K&H further argues the royalty obligation should accrue only when coal is sold, rather than when it is mined, for a more realistic value determination. The change in the basis for royalty payments is within the scope of BLM's readjustment authority. Ark Land Co., 86 IBLA at 159. 43 CFR 3485.2 addresses appellant's concerns regarding the value determination of unsold coal.

K&H complains that while BLM overruled its objections to language in sections 12 and 13 of the proposed lease form, relating to multiple use, it "is aware that the entire form has been changed with respect to the subjects covered in sections 12 and 13. The new lease form of Coal Lease Readjustment as in use by the Utah State Office responds in several significant ways to the objections of K&H" (Statement of Reasons at 14). It states that because a coal lease readjustment form was not provided with BLM's decision it is unable to determine whether BLM intends to use its new form in readjusting lease U-067498. BLM filed no response to appellant's statement of reasons; therefore we do not know its intent. However, we assume it would use its updated form for sections 12 and 13 and we direct it to do so.

Section 16 of the lease regarding employment practices is unacceptable, K&H argues, because it does not accurately reflect the requirements of 30 U.S.C. § 187 (1982) which provides in part: "Each lease shall contain * * * provisions prohibiting the employment of any child under the age sixteen

^{3/} We recognize that in FMC Wyoming Corp. v. Watt, 587 F. Supp. 1545 (D. Wyo. 1984), the United States District Court for Wyoming held that the Department could not apply the statutory mandated surface mining rate of 12-1/2 percent to all leases for surface mining operations subject to readjustment and that the applicable royalty rate must be individually tailored to each lease. However, the Department has appealed that decision to the Tenth Circuit Court of Appeals, docket number 84-2175 (Aug. 29, 1984).

* * * None of such provisions shall be in conflict with the laws of the State in which the leased property is situated." K&H complains the language of the lease is more limiting than the statute because the lease language relates only to the minimum wage restriction, while the statute addresses other employment practices. Although it is unnecessary to include in the lease the language relating to conflicts with State law, since the statutory language is controlling, see Coastal States Energy Co., 81 IBLA at 177, if BLM does not include the language in the leases, it should be in conformity with the statute.

Section 26 of the lease should be modified to limit the frequency of the lessor's access to books, records, and workings to avoid undue interference with operations, K&H asserts. Department regulations, 30 CFR Part 721 and 43 CFR Subpart 3486 provide guidelines with respect to inspections of the lessee's operations. Since the lease provisions are not inconsistent with the appropriate regulations, BLM properly overruled K&H's objection.

In response to objections raised by K&H to 9 of the 15 special stipulations incorporated in section 30 of the proposed readjusted lease, BLM stated in its decision at pages 10-11:

These specific operational stipulations could have been included as part of the Resource Recovery and Protection Plan approval process. However, these stipulations are Forest Service requirements and, pursuant to regulation 43 CFR 3400.3-1, leases for lands the surface of which is under the jurisdiction of another Federal department are subject to such conditions which that agency prescribes. Therefore, our authority to amend these stipulations are [sic] somewhat limited. For the most part, Forest Service requirements are no more stringent than those stipulations that will be required before surface disturbance activities can take place on the lease area. It is not anticipated that inclusion of these special stipulations will inhibit recovery of the coal resource any more than will the requirements of the operational plan approvals and, therefore, do not impose an undue burden on the lessee. Therefore, the objections made by the lessee concerning these stipulations are hereby overruled subject to the following exception. The reference to mining plan in these stipulations is amended to read Resource Recovery and Protection Plan as has been stated previously. Finally, with respect to part of your objection concerning special stipulation number 6, the phrase "prior to entry upon the lease" is amended to read "prior to entry upon the lease to conduct surface disturbance activities."

On appeal K&H recognizes the similarity between certain of the objectionable stipulations and those reviewed in Sunoco Energy Development Co., 81 IBLA at 138-39. K&H states that "[b]ased upon the Sunoco Decision and subsequent actions by the BLM it is presumed the form of Coal Lease Readjustment eventually submitted to K&H will contain such revisions." However, to protect its interests it has renewed all its objections on appeal.

We recognize that because of the requirements of 30 U.S.C. § 352 (1982) and 43 CFR 3400.3-1, BLM may not unilaterally amend the stipulations recommended by the Forest Service. See Amoco Production Co., 69 IBLA 279 (1982). However, BLM should determine whether the Forest Service is willing to modify the language of stipulation 6 referring to the surveying of "migratory species of high Federal interest." The term "high Federal interest" should be defined. Also stipulation 15 requires the lessee to replace or restore "land monuments" in their original location or at other locations that meet the needs of the "land net." The meaning of the terms "land monuments" and "land net" should be specified. K&H's other objections to the stipulations have been considered, and we find them to be without merit.

To the extent other arguments raised by K&H have not been specifically addressed in this opinion, those arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as modified.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anita Vogt
Administrative Judge
Alternate Member

